

## **REMARKS**

Careful consideration has been given to the Official Action of July 7, 2009 and reconsideration of the application as amended is respectfully requested.

### **Claim Status**

Claims 38 to 45 and 58-62 are directed to an elected invention in this application.

Claims 32-39, 41-45 and 58-60 have been rejected under 35 USC 103 as unpatentable over Medoff (U.S. Patent 5,709,682) in view of Laboreau (U.S. Patent 5,662,655).

Claim 40 is rejected on the same combination in view of Gaspar (U.S. Patent 1,315,926).

### **Claim Amendments**

Claims 63-67 have been added to the application.

Claim 63 is drawn to the features illustrated in Figs. 1-3 and as described in paragraph 0058 in which the distal ends of the legs of the wire element are shaped and arranged to be adapted for entry into respective holes drilled in the unstable bone fragment.

Claim 64 is drawn to the arrangement wherein the distal end of one of the legs is longer than the distal end of the other of the legs thereby facilitating entry of the legs into the drilled holes.

Claim 65 is drawn to the feature wherein the distal ends of the legs are bent and are of different length.

Claim 66 is drawn to the feature wherein at least one of the bent ends of the legs are inclined proximally towards the U shaped bend as shown in Fig. 2 and described in paragraph 0059.

Claim 67 adds the feature in which the bent ends of the legs have sufficient length to be adapted to penetrate the stable bone fragment as shown in Fig 2

### **Arguments for Patentability**

It is noted at the outset that the final rejection is incomplete and therefore invalid because the Examiner failed to consider claims 61-62 added in the response filed April 2,2009

Newly added claims 63-67 are drawn to the elected invention and incorporate features which are not remotely shown in the cited art. Specifically, none of the references show the provision of the bent ends penetrating drilled holes in the unstable bone fragment in order to buttress and support the bone fragment. These are new issues which in the absence of any pertinent art justify the allowance of the claims. Since these claims will require further consideration and or search by the examiner, a first action final rejection would not be proper.

With respect to claims 38-45 and 58-62 it is respectfully submitted that the Examiner has erred in applying the Medoff patent in combination with Laboreau.

Medoff discloses a clamp arrangement and the Examiner proposes to isolate one of the elements and combine this with the Laboreau reference to arrive at the claimed invention. It is respectfully submitted that it is not obvious to undertake this combination particularly in light of the fact that Medoff and Laboreau have dissimilar

structers and operate in different ways. Specifically, Medoff shows a buttress pin having two legs both buttressing one bone of a fracture whereas Laboreau shows a plate staple in which two legs engage respective bone fragments on opposite sides of the fracture to secure the bone fragments together

It is respectfully submitted that it is not obvious as alleged by the Examiner to arrive at the offset buttress pin of the invention based on the cited references.

In the first place Laboreau shows an implant which is a staple. It is not in two planes and it is an implant in which the mechanics of the implant are to prevent the two legs from separating in order to hold the fracture site closed. In this regard the legs and the metal bridge between them have to be of sufficient strength to prevent the legs from being spread apart. The offset nature of the bridge serves to conform to the surface contour of the bone of one fragment to another. In contrast, the offset buttress pin of the invention is loaded axially (or longitudinally) so that the line of force is in line with the long axis of the U-shaped member. There is essentially no force that causes the legs to diverge. The implant does not need to be bulky and strong to resist opening up which is important for the site of application of the wrist where the bulk of a long implant will lead to pending irritation and rupture.

Furthermore, the offset can also be in the length of the legs in order to

conform to the geometry of the joint surface or with the width of the U-shaped portion of the implant (in order to match the width of the bone as you go from proximal to distal).

First, the length change is at 90° to the U-shaped portion of the implant and would have nothing to do with the width of the U-shaped portion, but has to do with the fit of the U-shaped portion as it courses longitudinally along the bone. Since the implant of Laboreau has the U-shaped portion at 90° to the long axis of the bone the change in width is for a totally different purpose. Moreover, the change in width is in a totally different plane than the application of the external load; therefor application of the external load and therefore does not make this an obvious choice to combine with the Medoff patent. Furthermore, the legs of Laboreau do not remain parallel both before and after the bend as in Medoff in order to oppose the longitudinal load on the buttress pin.

Medoff discloses a buttress pin in which the legs buttress the unstable bone of the fracture whereas Laboreau shows a plate staple in which the legs are embedded in both the bone fragments on opposite sides of the fracture. The structure and mode of operation are completely different and one skilled in the art would not be motivated to apply Laboreau to Medoff.

With regard to the Gaspar patent cited in respect of claim 40 it is not seen how this has any relevance to the present invention nor is it obvious to combine this

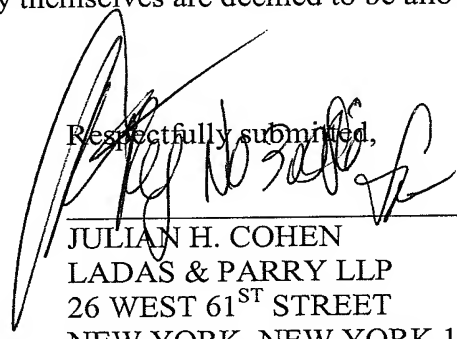
reference of unrelated art with the cited Medoff and Laboreau patents. The double bends in the hair pin of Gaspar are not of different length or positions and consequently would not appear to have any influence on features of the claimed offset buttress pin of the invention.

Finally, Applicant can state that as one skilled in the art and familiar with the construction of the implant in Medoff (his own invention) it was not obvious to him that he could have arrived at the invention based on the secondary references as these would not lead to a finalization of the offset buttress pin of the invention.

It is intended that a declaration will be forthcoming to establish this conclusion and it is requested that the Examiner withhold action on this response until the declaration has been made of record.

Nevertheless, it is respectfully submitted that claims 63-67 are drawn to features notherebefore claimed which by themselves are deemed to be allowable.

Respectfully submitted,



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